

DEPARTMENT OF THE NAVY
Office of the Chief of Naval Operations
Washington, D.C. 20350

OPNAVINST 5529.1
OP-009
8 November 1984

OPNAV INSTRUCTION 5529.1

From: Chief of Naval Operations
To: All Ships and Stations

Subj: PROCEDURES FOR DETERMINING SENSITIVE COMPARTMENTED INFORMATION (SCI) ACCESS ELIGIBILITY AND REQUESTING FURTHER CONSIDERATION OF DETERMINATION OF INELIGIBILITY

Ref: (a) Director, Central Intelligence Directive 1/14 of 1 Sep 1983, (NOTAL)
(b) OPNAVINST 5510.1G
(c) SECNAVINST 5211.5C

1. Purpose. To establish administrative procedures regarding access eligibility for SCI and to establish procedures for appeal in cases of access ineligibility determinations. This instruction implements the appeals procedure authorized and established by references (a) and (b) and supersedes all other practices and procedures.

2. Policy. The policy of the Chief of Naval Operations is that:

a. the protection of the national security shall always be the paramount interest in all SCI access eligibility determinations;

b. personnel security standards shall be applied with the maximum feasible uniformity and substantive and procedural consistency in all Navy SCI access eligibility determinations; and

c. consistent with national security interests, any person whose SCI access eligibility is denied or revoked shall have the right to appeal that determination in accordance with this instruction.

3. Applicability and Authority

a. This instruction applies to all military and civilian personnel, including Department of Defense contractors, who are under the security cognizance of the Department of the Navy and who require access to SCI which is subject to the jurisdiction of the Department of the Navy.

b. As the Senior Official of the Intelligence Community (SOIC) for the Department of the Navy, the Director

of Naval Intelligence (DNI) is authorized to grant, deny or revoke SCI access eligibility in the cases of personnel specified in paragraph 3a.

4. Delegation. This authority is hereby delegated to Commander, Naval Intelligence Command (COMNAVINTCOM) and Commander, Naval Security Group Command (COMNAVSECGRU) within their respective areas of jurisdiction. Further delegation to their respective Deputies is authorized.

5. Responsibilities. Each Commander will, consistent with paragraph 2b, establish parallel procedures for the adjudication of determinations of SCI access eligibility and ineligibility and the consideration of appeals from ineligible determinations. Such procedures shall provide for:

a. The appointment of a Determination Authority who will:

(1) oversee the adjudication process to ensure consistent and equitable application of SCI access eligibility standards, guidelines and procedures;

(2) make all decisions to deny or revoke SCI access eligibility;

(3) ensure prompt consideration of timely appeals from decisions of denial or revocation;

(4) ensure all notification requirements are satisfied; and

(5) implement all adjudicative and appeal decisions.

b. The appointment of an Appellate Authority, consisting of not less than three senior officials of broad experience and mature judgment, who shall:

(1) upon application, consider all timely appeals properly brought before it;

(2) as appropriate, affirm, reverse or modify actions of the Determination Authority; and

(3) ensure all notification requirements are carried out.

6. Procedures

a. All determinations will be guided by the criteria established in references (a) and (b).

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b. Consistent with the interests of the national security, individuals whose access eligibility is denied or revoked by the Determination Authority will be:

(1) notified of the decision to deny or revoke SCI access;

(2) notified of the procedure by which the reason or reasons for such denial or revocation may, if consistent with national security, be obtained; and

(3) afforded the opportunity to appeal the decision to the Appellate Authority, to supplement the record, and to submit a written appeal.

c. Appellants will be notified of the results of the appeal, and if the ineligible decision is sustained, of the right to a second appeal, limited to the existing record, to COMNAVINTCOM or COMNAVSECGRU, as appropriate.

d. Appellants will be notified of appeal determinations and of the right, consistent with national security, to be provided with the reasons for the decision.

e. Limitations

(1) Time

(a) **First Appeal:** Requests must be in writing and be submitted through the appropriate chain-of-command/contract program security monitor within 45 calendar days from the date of a notice of an SCI access ineligibility determination or 45 calendar days from the date on which notice is given of the reasons for denial or revocation, if a request for reasons was made within the first 45 days. Requests for additional time will be considered only in extraordinary circumstances, for operational delays, or for government fault in delay.

(b) **Final Appeal:** Requests must be submitted in writing to COMNAVINTCOM or COMNAVSECGRU through the appropriate chain-of-command/contract program security monitor within 30 calendar days after receipt of a notice of affirmation of an ineligibility determination on the first appeal.

(2) **New Information.** At the time of the first appeal, the appellant is afforded the opportunity to present in writing any new or amplifying information which may explain, mitigate, or refute the information in the existing record.

(3) **Finality.** Decisions of the Appellate Authority which are not further appealed within the prescribed time limit are final. Decisions of the COMNAVINTCOM and COMNAVSECGRU are final when rendered.

f. **Conflict of Interest.** In the event that a determination presents the appearance of an institutional conflict of interest, the case may be referred to the opposite command for consideration and decision.

7. Judge Advocate General (JAG)

a. Whenever, in the judgment of the Determination Authority, the Appellate Authority, COMNAVINTCOM or COMNAVSECGRU, actual or potential legal issues arise during the process of making SCI access eligibility or ineligibility determinations, or in the consideration of appeals, the JAG or his designee shall be consulted.

b. The Appellate Authority will notify the JAG or his designee of all Final Appeals in which the determination of SCI access ineligibility is affirmed, and shall submit each such case for a review as to legal sufficiency upon request of the JAG or his designee.

8. Suspension of Access. Nothing in this instruction shall preclude a commanding officer or officer in charge from taking appropriate action to suspend a person's access to SCI for due cause. Upon effecting such action, the responsible official will notify the Determination Authority who will implement the review process set forth in this instruction.

9. Definitions. For purposes of this instruction, the following meanings apply:

a. **SENSITIVE COMPARTMENTED INFORMATION (SCI)** refers to all information and materials requiring special intelligence community controls indicating restricted handling within present and future community intelligence collection programs and their end products. These special community controls are formal systems of restricted access established to protect the sensitive aspects of sources, methods and analytical procedures for foreign intelligence programs. The term does not include **RESTRICTED DATA**, as defined in Section II, Public Law 585, Atomic Energy Act of 1954, as amended.

b. **SCI ACCESS ELIGIBILITY** is an administrative determination based upon all relevant facts available that an individual (1) meets all the minimum investigative

requirements of reference (a); (2) is eligible for a Top Secret security clearance; (3) has an actual or potential need for access to SCI; and (4) meets the minimum personnel security standards established by reference (a).

c. SCI ACCESS INELIGIBILITY is an administrative determination based upon all the relevant facts available that an individual does not meet the minimum personnel security standards or that the minimum investigative requirements have not, **OR** cannot, be met.

d. RECORD refers to any item, collection or grouping of information about an individual that is maintained by a component of the Department of Defense, including, but not necessarily limited to, personnel security eligibility/information access files and personnel security or criminal investigative files. As used in this instruction, the "record" of an individual which pertains to the process of making an SCI access eligibility determination may actually con-

sist of documents located in several different systems of records. For purposes of accessing these records under provisions of either the Privacy Act of 1974 or the Freedom of Information Act, application to the separate systems managers may be required, as portions of these documents may be exempt from release under provisions of these laws. Reference (c) pertains. Investigative files of either the Defense Investigative Service or the Naval Investigative Service may also contain relevant information. As used in this instruction, the "existing record" to be reviewed by COMNAVINTCOM and COMNAVSECGRU will consist of the complete files as reviewed by the Determination Authority, including all amplifying information submitted by the individual to the Appellate Authority.

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